



## National Referral Mechanism

### About the Office of the Children's Commissioner

The Office of the Children's Commissioner (OCC) is a national public sector organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. We promote and protect children's rights in accordance with the United Nations Convention on the Rights of the Child and, as appropriate, other human rights legislation and conventions.

We do this by listening to what children and young people say about things that affect them and encouraging adults making decisions to take their views and interests into account.

We publish evidence, including that which we collect directly from children and young people, bringing matters that affect their rights to the attention of Parliament, the media, children and young people themselves, and society at large. We also provide advice on children's rights to policy-makers, practitioners and others.

The post of Children's Commissioner for England was established by the Children Act 2004. The Act makes us responsible for working on behalf of all children in England and in particular, those whose voices are least likely to be heard. It says we must speak for wider groups of children on the issues that are not-devolved to regional Governments. These include immigration, for the whole of the UK, and youth justice, for England and Wales.

The Children and Families Act 2014 changed the Children's Commissioner's remit and role. It provided the legal mandate for the Commissioner and those who work in support of her remit at the Office of the Children's Commissioner to promote and protect children's rights. In particular, we are expected to focus on the rights of children within the new section 8A of the Children Act 2004, or other groups of children whom we consider are at particular risk of having their rights infringed. This includes those who are in or leaving care or living away from home, and those

receiving social care services. The Act also allows us to provide advice and assistance to and to represent these children.

## **Our vision**

A society where children and young people's rights are realised, where their views shape decisions made about their lives and they respect the rights of others.

## **Our mission**

We will promote and protect the rights of children in England. We will do this by involving children and young people in our work and ensuring their voices are heard. We will use our statutory powers to undertake inquiries, and our position to engage, advise and influence those making decisions that affect children and young people.

## **Introduction**

While the National Referral Mechanism (NRM)<sup>1</sup> is a mechanism that is used to identify and support both adults and children who have been trafficked, this submission will focus on children who may have been victims of human trafficking, exploitation or modern slavery.

We believe that in order to meet the UK's international obligations to children, the identification and support processes must be child centred. In order for this to happen, the NRM needs to be embedded within existing safeguarding processes.

OCC has had a range of concerns about how the NRM has operated since its inception and as we have seen it develop over the last five years. We outline these concerns at the start of each section of this submission which follows the structure set out for the review by Jeremy Oppenheim in his invitation to OCC to participate in it.

## **1. Identification**

The questions the review asks regarding identification of victims are **highlighted** below followed by OCC's principal concerns. This is the format used throughout this submission for answering the questions to which OCC is able to make a contribution.

### **Q. Is the identification and referral process for potential adult and child victims effective?**

*OCC concerns:*

We restrict ourselves to comments on the process for potential child victims in line with our remit. There appears to be significant variation in the effectiveness of the identification and referral process for potential child victims of trafficking across and

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<sup>1</sup> The NRM was implemented in the UK in April 2009, following UK Government ratification of the Council of Europe Convention on Action against Trafficking in Human Beings in December 2008.

between organisations designated as ‘first responders’. There appears to be a number of reasons for this including:

- low levels of awareness of the NRM system within some first responder organisations.
- a lack of training on indicators of child trafficking and profiles of victims which results in both some child victims not being identified by a first responder and also some children who have not been trafficked being incorrectly identified and referred<sup>2</sup>.
- a possible conflict of interest between the core function of some first responder organisations and their first responder status. For example, a core function of the police is to secure convictions for crimes which may be mitigated against (or prosecutions abandoned) where the child is recognised as a victim of human trafficking. In relation to parts of the Home Office there is a potential conflict between referring a child as a victim of trafficking and targets to remove or deport foreign national criminals convicted of crimes committed while a child.
- OCC recognises that Clause 44 of the Bill places a duty on ‘specified public authorities’ to notify the National Crime Agency (NCA), which incorporates the United Kingdom Human Trafficking Centre (UKHTC), if it has reason to believe that a person may be a victim of slavery or human trafficking. This will be a new duty. Currently, there is no statutory requirement to report a suspected victim to the NRM and the system relies on voluntary referral by the agencies designated as ‘first responders’. Which public authorities will be ‘specified’, and thus have the duty to report, will be laid down in regulations. In the case of a suspected child victim, the duty to notify the NCA will require the specified authority to provide information identifying the child without their consent. OCC cautiously supports the proposal to make reporting of suspected trafficking mandatory in children’s cases on the basis that this will improve reporting rates. However, given our other concerns, a move to mandatory reporting must be accompanied by other significant changes that contribute to their being a discernable benefit in going through the NRM.
- ‘Specified authorities’ must include all parts of the Home Office which may be in a position to act of first responder including Criminal Casework Directorate.

**Q. Is the role of First Responders in identifying and referring potential victims to the NRM effective?**

*OCC concerns:*

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<sup>2</sup> OCC came across one such example in 2013. An Albanian girl who was a victim of attempted forced marriage by her father and who ran away who was incorrectly referred by her local authority to the NRM.

- Amongst some local authorities a view that there is little purpose in referring children to the NRM. This may be influenced by funding arrangements which reimburse a local authority for the care of an unaccompanied child seeking asylum but not for a child who may be the victim of trafficking unless they also claim asylum. For UK national victims of 'internal' child trafficking, there is limited evidence to suggest that the referral to the NRM process. UK nationals recognised as victims of child sexual exploitation should already be subject to the appropriate safeguarding processes and the exploitation subject to police investigation. Local authorities may therefore be disinclined to make a referral to the NRM.
- 'Systems' or protocols within first responder organisations may not be clear enough about where reporting responsibilities lie which may delay or frustrate a timely referral. For example, where a potential child victim of trafficking claims asylum, Home Office screening staff have, on occasion, been reluctant to make a referral under the NRM believing this to be the job of the child's case owner, who the child will not see until well after the lodging of an asylum claim.
- OCC remains concerned about an over-reliance by Border Force on documents used for travel. It is widely accepted that documents may be forged and are used by traffickers to ease a child's passage into or through a country .OCC has interviewed a trafficked girl who was not believed initially because of the documents she was forced to carry. Please see the case study at **Annex A**.

**Q. How can the NRM process encourage more victims to come forward, be identified and support criminal investigations?**

*OCC's concerns*

- Local Authority First Responders do not always ensure that the potential child victim is safe and is able to participate in the NRM process. For example, some potential child victims are placed in accommodation that is unsupervised or in the same area as their trafficker.
- There is currently little incentive for a child to be referred into the NRM to access support and a residence permit. An NRM referral triggers an additional legal process which children struggle to understand. The process risks them being disbelieved and having their credibility called into question.
- There is almost a total absence of prosecutions where a) the victim is a child and b) there are no sexual offences charged. From recent answers to parliamentary questions it can be summarised that: a) Since the introduction of s71 of the Coroners and Justice Act there have been no cases flagged

where the victim was a child or a child at the time of the prosecution and b) of the 59 defendants charged with human trafficking offences in 2013-14 where the victim was a child, only one case appears to have been for non-sexual exploitation. Fifty defendants were charged with sexual offences and 8 with conspiracy.

- The absence of prosecutions for particular types of offenses such as trafficking for criminal activity such as cannabis cultivation means that victims of these offences lack confidence to come forward and support criminal investigations. It is clear that prosecuting offences will encourage victims to come forward and that a failure to do so will lead to the belief that their traffickers are immune and able to circumvent the law. The NRM process could be used more effectively to gather intelligence that could lead to prosecutions. It appears that currently the NRM is used solely for identification purposes and not to build intelligence.

## **2. Access to support**

The questions the review asks regarding access to support are:

### **Q. Who should be entitled to access victim support through the NRM?**

*OCC concerns*

- Those who receive a positive reasonable grounds decision. The risk of waiting to provide protective services to those with a positive conclusive grounds decision is too great.
- Where a local authority suspects that a child may have been trafficked or have had a child referred to them on that basis, they should be providing services as if trafficked status had been established while awaiting the reasonable grounds decision as it is widely known that trafficked children will often go missing within 48 hours of being placed in care.

### **Q. Are the current thresholds for assessing an individual as a victim appropriate – or are they too restrictive or open to abuse?**

*OCC concerns:*

- There is a two stage process for assessing whether someone is a victim of trafficking. The competent authority first assesses whether there are 'reasonable grounds' for thinking that an individual is a victim and then goes on to make a 'conclusive grounds' decision. We were told during our visit to the 'Leeds hub' on 16 July 2014 that there are different standards of proof that apply to these different stages. Competent authority decisions on whether

there are 'reasonable grounds' to suspect someone is a victim use a low standard of proof (below the civil standard). It appears right to operate a low standard for the reasonable grounds decision as not to do so would risk potential victims not getting the services they require to keep them out of the hands of traffickers. In the case of possible child victims, this might mean the provision of specialist safe accommodation where the carer is attuned to the potential for the child to return to the trafficker, more intensive support from social care staff and the provision of a lawyer, even where the child has not considered claiming asylum. The conclusive ground decision is taken on the civil stand of proof – the balance of probabilities (is it more likely than not that the person is a victim of trafficking?). The real issue here is what evidence is obtained by the decision-maker to be in a position to make a conclusive grounds decision. We were told during the visit to the Leeds hub that in the referrals they dealt with around 70% had also claimed asylum. Where asylum had been claimed, further information to reach the conclusive decision would normally be obtained through the substantive asylum interview. For the 30% who did not claim asylum, Home Office competent authority decision makers rely only on written information from first responders (social worker, NGO etc). No personal interview with the alleged victim takes place.

- If the Leeds hub information is correct, the Home Office decision-maker in non-asylum cases (30%) relies only on the initial information submitted to the UKHTC by the first responder. It seems probable that no further pro-active enquiries are made in non-asylum cases and that the conclusive grounds decision made at the higher standard of proof relies on the same body of information as for the decision at the reasonable grounds stage in the 30% of cases where the individual is not claiming asylum.
- A further complication is that the standard of proof in asylum cases is also below the civil standard and expressed as 'a reasonable degree of likelihood' or 'a real risk'. However, while the standard in asylum cases applies to the risk of persecution on return, the standard in trafficking cases relates to a retrospective matter of fact – whether the person does or does not meet the definition of trafficking contained in the Council of Europe Convention on Action against Trafficking in Human beings (the Convention) – essentially whether they have been coerced or deceived into a situation where they are exploited.
- Home Office should produce disaggregated internal management information on their conclusive grounds decisions in asylum and non-asylum NRM cases. Consideration of such information might disclose whether an asylum interview acts as a factor that lessens or increases the chance of someone being recognised conclusively as a victim of trafficking.

- It is not right that a substantive asylum interview should be the primary source of information relied upon by Home Office competent authority decision makers to make conclusive grounds decisions when both the standard of proof and purpose of the interview are quite distinct.

### 3. Governance

The questions the review asks regarding governance are:

- Q. Which organisation(s) is/are best placed to: manage and administer the NRM; and make 'competent authority' decisions on trafficking claims?
- Q. What more can be done to strengthen the links between organisations involved in the identification and support of victims?
- Q. Are the links with wider organisations (first responders, victim support sub-contractors ) effective and do they support effective identification of and help for victims?
- Q. What are the advantages and disadvantages of placing the NRM onto a statutory footing and providing victims with appeal rights?

***Q. Which organisation(s) is/are best placed to: manage and administer the NRM; and make 'competent authority' decisions on trafficking claims?***

*OCC Concerns:*

- The UKHTC now sits within the National Crime Agency. As such, its main function is the detection and evidence gathering on traffickers and their networks. We have been told that UKHTC does not really want the function of managing and administering the NRM or its current function of decision making in UK and European Economic Area (EEA) cases as it eats into their resources and limits their ability to reach targets that exist in the 'policing' elements of their role. Given this, it appears highly unlikely that UKHTC would wish to take on non-EEA cases in addition.
- The discussion at the NRM workshop started a discussion on a multi -agency decision making model for the trafficking status decision (Multi-Agency Safeguarding Hub / Local Safeguarding Children's Boards). OCC sees developing such a multi-agency approach as being the best way forward. We are particularly keen that, for children, competent authority decision making should sit within existing child protection structures.
- A multi-agency panel should provide a reasoned written decision with either an appeal or a review possible in cases of dispute. The written decision should be provided to the Home Office where an asylum claim has been made on the same set of facts. It is not necessarily the case that a positive

conclusive grounds decision would lead to asylum but the information will be pertinent to the asylum decision maker.

- OCC takes the view that the matter of what leave would be given to non-EEA cases with a positive conclusive grounds decision and no asylum component is a matter that should remain in the hands of the Home Office.
- Despite evident improvements in the current decision making structures in non-EEA cases due to centralisation of decision making in the Leeds Hub, OCC does not believe that leaving decision making within the Home Office is the correct path to follow. Despite the concentration of expertise, it is clear that the hub only deals with non-detained cases. Other parts of the Home Office, including criminal casework directorate, Third Country Unit and, possible Detained Fast Track, also act as the 'competent authority'. For children convicted of cannabis cultivation, Criminal Casework will also be the competent authority for their trafficking claim. There is a clear conflict of interest here as the core work of CCD is deporting or removing foreign national criminals.

***Q. What more can be done to strengthen the links between organisations involved in the identification and support of victims?***

*OCC Concerns:*

- Placing a duty on designated public authorities will obviously improve the link between those who support victims and those who currently identify them. The regulations should stipulate what information the designated public authority is required to provide.
- Those who support victims, including lawyers, should have a facility for providing a written statement from the child to the competent authority explaining the child's circumstances. A personal interview may be necessary on the back of such a statement in some cases although there may be other ways that such testimony can be obtained, for example, from carers and paediatricians etc.

***Q. Are the links with wider organisations (first responders, victim support sub-contractors) effective and do they support effective identification of and help for victims?***

- OCC does not have a large evidence base on this. In order to link up the disparate organisations that will have a role to play in identifying and supporting a child victim of trafficking a Guardian or as they are called in the Bill a 'child trafficking advocate' should be appointed.



- The Government has announced a trial of 'child trafficking advocates' across 23 local authority areas to take place over the summer of 2014. An 'enabling provision' (Clause 41) has been put in the draft Modern Slavery Bill published in June 2014, which provides for the Secretary of State to make arrangements to enable child trafficking advocates to be available to represent and support those who there is reason to believe may be victims.
- The core of Clause 41 is the provision under 41 (4) to allow the Secretary of State to make regulations about child trafficking advocates. OCC supports the strongest possible regulations that fully reflect the Government's commitments under the UNCRC.

***Q. What are the advantages and disadvantages of placing the NRM onto a statutory footing and providing victims with appeal rights?***

- The Bill does not currently contain provisions for putting the NRM on a statutory footing nor of giving a person whose status is not confirmed in the conclusive grounds decision a right of appeal. The 2014 Immigration Act deals with appeals in Part 2. Appeal rights in immigration cases will in future (once Part 2 is in force) limit appeals to the Tribunal to where a) the Secretary of State has decided to refuse a 'protection claim', a 'human rights claim' or to revoke protection status. The definition in the 2014 Act of these terms suggests that an appeal against the refusal to recognise someone as a victim of trafficking would not, in the new scheme, attract a right of appeal. To provide a right of appeal, the Act would need to be amended. OCC would rather that, in the case of children at least, a right of appeal should be considered to the family court rather than the immigration tribunal.

## OCC submission on reform of the NRM - Annex A (Case study)

Child D was trafficked from Nigeria with the intention of transiting the UK on the way to France. France and Italy are common destination countries for girls from Nigeria who are forced to work in the sex trade to pay the 'debt' to their trafficker.

*"I lost my parents. They were killed. I went to live with a woman in Nigeria. I had my younger brother with me. She was treating us badly. She stopped us from going to school. I told her I was tired of how she was treating us so she threw me out. I met this other woman. She sent me on an errand for something at about eight in the night. When I got back she asked me about myself. I told her I had no one and nowhere to stay. She said she would help me. I stayed with her for about a month. She asked me - can you do anything? I said 'I can do hair'. She said she would help me so I could help my brother who was not in school. But she said she could only help me in another country."*

*"The woman had her own passport – I'm not sure if it was British. She brought four of us here, two were older and one younger – all of us were girls. She gave me three passports, one from Ghana, one from Nigeria and one American. She said 'if police ask anything, say a man gave you these and say we are travelling by ourselves'. She said I would have to pay her 60,000 Naira<sup>1</sup> in two years for her help. I was not sure where I would get that amount of money from."*

*"We left Nigeria and flew to Heathrow in transit to France. I travelled along by her but not with her. She would only text me on my mobile if she wanted to say anything or meet me somewhere. We were about to go to France and the police<sup>2</sup> checked my passport and saw that it wasn't me. So they stopped me and asked me where I was from. I had showed them the American passport. They took me to a police station. The police said they would give me a solicitor. When the lawyer arrived I told him I was from Nigeria. I didn't know what to do. On the passport it said I was 38."*

It is not clear from Child D's account how or why the Court determined that she was an adult but the conviction resulted in her being sent to an adult female prison.<sup>3</sup>

*"Both the lawyer and the court asked me if that was my age. The judge said I must give my date of birth. I give them the date that was in my passport which I had learned. I didn't say anything then about my past. I was scared and I don't know*

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<sup>1</sup> 1 Naira is worth around 0.39 pence

<sup>2</sup> Although Child C talks of 'the police' in this context, it is likely that the officials who stopped her were immigration officers.

<sup>3</sup> S. 99 (1) of the *Children and Young Person's Act* 1933 states that if a person who comes before a criminal court is of uncertain age, the court has the power to "deem" his age. Under section 150(4) *Magistrates' Court Act* 1984 and section 164(1) of the *Power of Criminal Courts (Sentencing) Act* 2005, a person's age may be 'deemed' by the court after all available evidence has been considered. Once a person has been deemed a certain age by the courts, even if that age is later shown to be incorrect, the sentence or order passed on them is still lawful.

*what to say. My English was not so good as well. I just said that was my age. The court sentenced me to 12 months in prison for using a passport that wasn't mine."*

*"In prison I met a Christian group - other prisoners. They asked me about what happened and about France. I told them about it. The Christian group prayed for me and encouraged me. I was very worried that I would be sent back to Nigeria and that the woman would still be there. What would I do about the money she wanted?"*

*"Two months before my sentence was due to finish - I don't know why they came - I was visited by someone from Immigration and I told them what had happened. She said I was lying and she didn't believe me. She said because I was lying I would spend more time in prison. I was still praying to God that he should help me. I was in prison for six months, two weeks and two days. Two weeks and two days extra. The last day came on a Wednesday in March (2012). I wasn't sure what to do. Immigration had sent me papers to deport me back to Nigeria."*

*"Before I left prison I was told I was having a social services age assessment. I didn't know what that meant or why I was having one. After the first age assessment they came again and said 'we're not sure about some things so we are asking again'. I didn't understand what they wanted or what they were asking for. They were asking the same questions – the same people asking the same questions. I don't know why they were asking the same questions four or five times. I think they were trying to see if I'd say what I said before or whether I would change my mind"*

*"On the day I was due to leave prison, the social services just arrived and took me to a foster home. They didn't really tell me about the age assessment. They said if they made a decision they would tell me. When I got to the foster home they told me about the age assessment and agreed with me that I was 16. I had told them that I knew my age because my mother had told me the date that I was born."*

Child C still has no settled status but has had an interview with an immigration solicitor and is claiming asylum. She is also now studying at college and remains in foster care. She thanks God that she did not end up in France with her trafficker and thinks it was good that the 'police' stopped her from travelling. She remains traumatised by the time she spent in an adult prison.